

MINUTES OF THE
LAW AND REGULATION COMMITTEE
STRUCTURAL PEST CONTROL BOARD
November 13, 2002

The meeting was held on Wednesday, November 13, 2002, at the Structural Pest Control Board, 1418 Howe Avenue, Suite 18, Conference Room, Sacramento, California, commencing at 10:00 AM with the following members constituting a quorum:

Larry Musgrove – Chair
John Ellinger
Harvey Logan
Dennis Patzer
John Van Hooser

Board staff present:

Kelli Okuma, Registrar
Susan Saylor, Assistant Registrar
Delores Coleman, Staff Services Analyst

The minutes for the October 2, 2002, Laws and Regulations Committee meeting were read. It was moved by John Ellinger and seconded by John Van Hooser that two adopted motions in the minutes be amended as follows:

John Van Hooser moved regarding Business and Professions Code section ~~8567~~ 8569, to recommend to the Board that ~~they pursue the question of whether a single person should continue to be able to qualify multiple companies or~~ the statute be changed to allow for only one qualifier for one company. John Ellinger seconded the motion. The vote was unanimous in favor of the motion.

~~Harvey Logan moved that the Board consider defining the term “original” as stated in Business and Professions Code section 8516(b) and 8518. John Van Hooser seconded the motion. The vote was unanimous in favor of the motion.~~

The vote was unanimous in favor of the motion. *(The October 2, 2002, minutes of the Laws and Regulations Committee as dispersed include the amendments as motioned and adopted above.)*

Harvey Logan moved that the committee recommend to the Board that Business and Professions Code section 8591 be amended in the following manner:

8591. If delinquency in the payment of the fee for renewal of any ~~operator's or field representative's~~ license extends beyond three months, the licensee ~~may~~ shall

not be reinstated and the licensee ~~may~~ shall be required to obtain a new license in accordance with the provisions of Article 4 (commencing with Section 8560)

John Van Hooser seconded the motion. The vote was unanimous in favor of the motion.

Harvey Logan moved that the committee recommend to the board that Business and Professions Code section 8592 be amended in the following manner:

8592. Any ~~operator, field representative, or applicator~~ licensee whose license is under suspension may make application for renewal of his or her license as provided in this article, but the board may not renew his or her license until the suspension has been lifted.

John Van Hooser seconded the motion. The vote was unanimous in favor of the motion.

John Van Hooser moved to recommend that the Board resubmit the proposal for continuing education requirements for applicator licensees with the Office of Administrative Law for a public hearing. Harvey Logan seconded the motion. The vote was unanimous in favor of the motion.

Harvey Logan moved that the committee urge the Board to pursue measures to upgrade the seriousness of violations regarding unlicensed activity, including possible changing Business and Profession Code section 8553 from a misdemeanor to a felony. John Ellinger seconded the motion. The vote was unanimous in favor of the motion.

Harvey Logan moved that the committee recommend to the Board that Business and Professions Code section 8611 be amended in the following manner:

8611. Each branch office shall have a branch supervisor designated by the registered company to supervise and assist the company's employees who are located at that branch. The branch supervisor shall be an individual who is licensed by the board as an operator or a field representative and his or her license shall be prominently displayed. If a branch supervisor ceases for any reason to be connected with a registered company, the company shall notify the registrar in writing within 10 days from that cessation. If this notice is given, the company's branch office registration shall remain in force for a reasonable length of time to be determined by rules of the board, during which period the company shall submit to the registrar in writing the name of another qualified branch supervisor.

John Van Hooser seconded the motion. The vote was unanimous in favor of the motion.

Harvey Logan moved that the committee recommend to the Board that Business and Professions Code section 8612 be amended in the following manner:

8612. The licenses of ~~operators~~ qualifying managers and company registrations shall be prominently displayed in the registered company's office, and no registration issued hereunder shall authorize the company to do business except

from the location for which the registration was issued. Each registered company having a branch office or more than one branch office shall be required to display its branch office registration prominently in each branch office it maintains. When registered company opens a branch office it shall notify the registrar in writing on a form prescribed by the board and issued by the registrar in accordance with rules and regulations adopted by the board. The notification shall include the name of the individual designated as the branch supervisor and shall be submitted with the fee for a branch office prescribed by this chapter.

John Ellinger seconded the motion. The vote was unanimous in favor of the motion.

Dennis Patzer moved that the committee recommend to the Board that they direct legal counsel to review Business and Professions Code section 8616.7 regarding the possible deletion of reference to the Division of Investigation and board personnel.

8616.7. When a county agricultural commissioner is acting, pursuant to Section 8616.4, only the commissioner may conduct inspections and routine investigations pursuant to Section 8616.5 and take disciplinary action pursuant to Section 8617. Except as otherwise provided, nothing in this section shall be construed as limiting or excluding the assistance provided to the board by the Division of Investigation under Sections 155 and 159.5 other than by board personnel.

John Ellinger seconded the motion. The vote was unanimous in favor of the motion.

John Van Hooser moved that the committee recommend to the Board that Business and Professions Code section 8617 be amended in the following manner:

8617. (a) The board or county agricultural commissioners, when acting pursuant to Section 8616.4, may suspend the right of a structural pest control licensee or registered company to work in a county for up to three working days or, for a licensee, registered company, or an unlicensed individual acting as a licensee, may levy an administrative fine up to one thousand dollars (\$1,000) for each violation of this chapter, or any regulations adopted pursuant to this chapter, or Chapter 2 (commencing with Section 12751), Chapter 3 (commencing with Section 14001), Chapter 3.5 (commencing with Section 14101), or Chapter 7 (commencing with Section 15201) of Division 7 of the Food and Agricultural Code, or any regulations adopted pursuant to those chapters, relating to economic poisons. Fines collected shall be paid to the Education and Enforcement Account in the Structural Pest Control Education and Enforcement Fund. Suspension may include all or part of the registered company's business within the county based on the nature of the violation, but shall, whenever possible, be restricted to that portion of a registered company's business in a county that was in violation.

(b) Before a suspension action is taken or a fine levied, the person charged with the violation shall be provided a written notice of the proposed action, including the nature of the violation and the amount of the proposed fine or suspension.

The notice of proposed action shall inform the person charged with the violation that if he or she desires a hearing before the commissioner issuing the proposed action to contest the finding of a violation, that hearing shall be requested by written notice to the commissioner within 20 days of the date of issuance of the written notice of proposed action. A notice of the proposed action that is sent by certified mail to the last known address of the person charged shall be considered received even if delivery is refused or the notice is not accepted at that address. If a hearing is requested, notice of the time and place of the hearing shall be given at least 10 days before the date set for the hearing. At the hearing, the person shall be given an opportunity to review the commissioner's evidence and a right to present evidence on his or her own behalf. If a hearing is not requested within the prescribed time, the commissioner may take the action proposed without a hearing.

(c) If the person upon whom the commissioner imposed a fine or suspension requested and appeared at a hearing before the commissioner, the person may appeal the commissioner's decision to the Disciplinary Review Committee and shall be subject to the procedures in Section 8662.

(d) If a suspension or fine is ordered, it may not take effect until 20 days after the date of the commissioner's decision if no appeal is filed. If an appeal pursuant to Section 8662 is filed, the commissioner's order shall be stayed until 20 days after the Disciplinary Review Committee has ruled on the appeal.

(e) Failure of a licensee or registered company to pay a fine within 30 days of the date of assessment or to comply with the order of suspension, unless the citation is being appealed, may result in disciplinary action being taken by the board. Where a citation containing a fine is issued to a licensee and it is not contested or the time to appeal the citation has expired and the fine is not paid, the full amount of the assessed fine shall be added to the fee for renewal of that license. A license shall not be renewed without payment of the renewal fee and fine. Where a citation containing a fine is issued to a registered company and it is not contested or the time to appeal the citation has expired and the fine is not paid, the board shall not sell to the registered company any ~~inspection stamps, notice of completion stamps, or~~ pesticide use stamps until the assessed fine has been paid.

(f) Once final action pursuant to this section is taken, no other administrative or civil action may be taken by any state governmental agency for the same violation. However, action taken pursuant to this section may be used by the board as evidence of prior discipline, and multiple local actions may be the basis for statewide disciplinary action by the board pursuant to Section 8620. A certified copy of the order of suspension or fine issued pursuant to this section or Section 8662 shall constitute conclusive evidence of the occurrence of the violation.

(g) Where the board is the party issuing the notice of proposed action to suspend or impose a fine pursuant to subdivision (a) of this section, "commissioner" as used in subdivisions (b), (c), and (d) includes the board's registrar.

Harvey Logan seconded the motion. The vote was unanimous in favor of the motion.

The committee discussed staff problems associated with Business and Professions Code section 8621 in relation to the requirement that staff only has one year to investigate and make disposition of a case after a complaint has been filed. It was pointed out that although the required timelines in the statute are restrictive they do help the board to maintain a record of timely investigation and disposition. The committee agreed that if the statutory requirement became too burdensome in the future the subject should be revisited.

Harvey Logan moved that committee recommend to the board that they direct staff pursue contact with the Department of Real Estate at agency level regarding rebates and its concern that participation by structural pest control licensees in programs involving rebate type programs is a violation of Business and Professions Code section 8640 and realtor participation in such programs constitutes aiding and abetting in the violation of existing law. Mr. Logan also moved that staff should report the results of such contact with the Department of Real Estate to the board.

John Ellinger seconded the motion. The vote was unanimous in favor of the motion.

John Van Hooser moved that the committee recommend to the Board that Business and Professions Code section 8651 be amended in the following manner:

8651. The performing or soliciting of structural pest control work, the inspecting for structural or household pests, or the applying of any pesticide, ~~chemical, or allied substance~~ for the purpose of eliminating, exterminating, controlling, or preventing structural pests in branches of pest control other than those for which the operator, field representative, or applicator is licensed or the company is registered is a ground for disciplinary action.

Harvey Logan seconded the motion. The vote was unanimous in favor of the motion.

Chairman Musgrove scheduled the next Laws and Regulations meeting for December 17, 2002 at 9:00 AM. The meeting will be held in the conference room at the Structural Pest Control Board offices located at 1418 Howe Avenue, Suite 18, Sacramento, CA 95825.

Chairman Musgrove adjourned at 1:35 PM.

LARRY MUSGROVE, Chairman

Date

KELLI OKUMA, Registrar

